

Rosado, Elizabeth

From: DeLeon, Jose
Sent: Wednesday, July 22, 2015 2:07 PM
To: Rosado, Elizabeth
Subject: FW:

From: Palmer, Todd E (24432) [mailto:tepalmer@michaelbest.com]
Sent: Thursday, January 29, 2015 2:10 PM
To: DeLeon, Jose
Subject: RE:

Thanks. Yes, you clearly understand our concern. I looked at this briefly and it seems to be a SEP with more moving parts than we have here. Goodman knows what they want to do and is in a position to get the project done fairly quickly. It seems to make sense to provide the money directly to Goodman as opposed to inserting an intermediary third party. Let me know what you think of my edits.

From: DeLeon, Jose [<mailto:deleon.jose@epa.gov>]
Sent: Thursday, January 29, 2015 1:55 PM
To: Palmer, Todd E (24432)
Subject: RE:

Todd,

I understand. Recently we filed a CD (link below) I worked on where the company agreed as a SEP to provide an organization several hundred of thousands of dollars towards lead abatement. Similar thing, but basically the deal was that we really could not control what happened and either could the Defendant in the case but we worked under the understanding that EPA would look at any problem that would come up, say for example the group did not provide the company with information on progress made in an understanding manner. In this case what we said was that the company would contract with someone to do the work and then provide progress reports. The thing is that we would be hard put to get people to do these SEPs if it went out to the public that we were going after someone for something that was outside their control. So the company by far gets the benefit of the doubt because it is understood that it is totally out their control. Let me look at what you have though and I will get back with you.

Thanks,
Jose

<http://www2.epa.gov/sites/production/files/documents/suncoke-cd.pdf>

From: Palmer, Todd E (24432) [mailto:tepalmer@michaelbest.com]
Sent: Thursday, January 29, 2015 1:35 PM
To: DeLeon, Jose
Subject: RE:

Great. Take a look at my edits to the Goodman Center SEP. I think you understand our concern and I hope you can see where I was going with my edits. The point is simply that Kipp cannot control the project being undertaken at the Goodman Center.

From: DeLeon, Jose [<mailto:deleon.jose@epa.gov>]
Sent: Thursday, January 29, 2015 1:33 PM

To: Palmer, Todd E (24432)

Subject: RE:

Todd,

Thanks and sorry that I have not returned your call. I actually talked to someone about the SEP issue and we can talk about it. Let me first in the next day or so take a look at your changes and let me see where we go.

I will give you a call in the next couple of days.

Thanks,

jose

From: Palmer, Todd E (24432) [<mailto:tepalmer@michaelbest.com>]

Sent: Thursday, January 29, 2015 1:30 PM

To: DeLeon, Jose

Subject: RE:

For Settlement Purposes Only

Subject to Fed. R. Evid. 408 and 40 CFR ¶ 22.22

Thanks Jose. Attached are redlined drafts that contain Kipp's changes.

As for the ACO, I made the edits that we discussed in our e-mail exchanges (no admission and release clauses).

For the draft CAFO, I have also added force majeure language that would apply to the SEPs. I added clarification to the first SEP to reflect that Kipp has no control over that project, rather the project is being done by the Goodman Community Center (Kipp is simply contributing money towards the funding of the project). I added a reference to the dispute resolution process allowed under 40 CFR 22.18(d) for the provisions that seek to provide unilateral decision making authority to EPA staff. I also made miscellaneous edits that to be consistent with other CAFOs I found. For your convenience I reference the CAFOs from where I pulled my the language.

Call if you would like to discuss.

From: DeLeon, Jose [<mailto:deleon.jose@epa.gov>]

Sent: Monday, January 26, 2015 8:54 AM

To: Palmer, Todd E (24432)

Subject: RE:

Todd,

Here is what should be the final ACO and the draft CAFO for your review. Let me know it is pretty much all boiler plate.

Thanks,

Jose

From: Palmer, Todd E (24432) [<mailto:tepalmer@michaelbest.com>]

Sent: Tuesday, January 13, 2015 3:35 PM

To: DeLeon, Jose

Subject: RE:

Jose,

Let me talk with the client and I will be back to you soon.

From: DeLeon, Jose [<mailto:deleon.jose@epa.gov>]

Sent: Tuesday, January 13, 2015 12:08 PM

To: Palmer, Todd E (24432)

Subject: RE:

Todd,

I understand your point here and I don't have any problem with 14 or 35. Usually that language is included in the CAFO. I do have a problem with language that could be construed in a way that would basically clear any past violations that we may at this point not be aware that exist. Sorry but as I said we can limit the language to the NOV but I cannot just write a blank check for past violations. Additionally, as far as Agmet, you are talking about one ACO with circumstances. I am right now working on 10 ACOs including yours and none of them have that language.

OK let me know.

Jose

From: Palmer, Todd E (24432) [<mailto:tepalmer@michaelbest.com>]

Sent: Tuesday, January 13, 2015 11:19 AM

To: DeLeon, Jose

Subject: RE:

For Settlement Purposes Only

Subject to Fed. R. Evid. 408 and 40 CFR ¶ 22.22

Jose,

Thanks for looking into this. However, I still do not understand why other sources (including Kipp) cannot use this language. Clearly EPA is authorized to grant a release of this scope – otherwise this ACO would not have been entered by EPA. If I understand EPA's position correctly, the Agency is simply choosing when it is willing to grant a release of this scope. In other words, it is simply a point of negotiation. If that is the case, Agmet is apparently paying no penalty whereas Kipp is incurring substantial expense to resolve its NOV.

I also think the no admission language in Agmet is something MKC should be allowed to use here. See paragraphs 14 and 35 of Agmet.

Thoughts?

From: DeLeon, Jose [<mailto:deleon.jose@epa.gov>]

Sent: Tuesday, January 13, 2015 11:00 AM

To: Palmer, Todd E (24432)

Subject: RE:

Todd,

I got it and I looked at it. I also spoke with the attorney that handled that matter. As you know our position is that each case is handled and settled independently as the issues and matters pertaining to one case will not always fit another case. In the case of Agmet there are certainly issues that are not alike anything in our case, the majority of which I am not at freedom to discuss. Therefore, as I have mentioned I cannot include the particular language requested.

Thanks and let me know. I should have a CAFO shortly.

Jose

From: Palmer, Todd E (24432) [<mailto:tepalmer@michaelbest.com>]

Sent: Tuesday, January 13, 2015 10:14 AM

To: DeLeon, Jose

Subject:

[http://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cf1f586257576006fb461/96e1daf7d642d69386257dbf004b7995/\\$FILE/r5-056376.pdf](http://yosemite.epa.gov/r5/r5ard.nsf/b7d2ca869c9cf1f586257576006fb461/96e1daf7d642d69386257dbf004b7995/$FILE/r5-056376.pdf)



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